

May 2, 2013

***Via U.S.P.S. First Class Mail, CMRRR 7010 1870 0000 7697 5053***

Clerk of the Court  
U.S. District Court, Northern California  
San Francisco Courthouse  
16th Floor  
450 Golden Gate Avenue  
San Francisco, California 94102



Re: *Angel Fraley, et al. v. Facebook, Inc., et al.*; Case No CV-11-01726 RS.

Dear Clerk:

I am a member of the class by virtue of being a person in the United States who has a Facebook account and had my name, nickname, pseudonym, profile picture, photograph, likeness, or identity displayed in a Sponsored Story at any time on or before December 2, 2012, the date of entry of the Preliminary Approval Order.

I received an email Notice of Pending Class Action and Notice of Proposed Settlement on February 01, 2013 stating that I may have been in a "Sponsored Story" on Facebook prior to December 3, 2012 (Exh. A). My Class Member Number from that notice is 973730139.

My name, address, email, and Facebook user name and page name are as follows:

Jo Batman  
441 Coral Place  
Corpus Christi, TX 78411  
Phone: 631.850.7118  
Facebook email: [jo.batman@kaplan.com](mailto:jo.batman@kaplan.com)  
Facebook page name: Jo Batman  
Facebook user name: jo.batman  
Class Member #: 973730139

I will not attend the fairness hearing.

I object to the Class Settlement, and I also object to the application by Class Counsel for attorneys' fees and costs and to the application for excessive service awards for the Class Representatives. Additionally, I object to the insufficiency of the Notice, the confusing and complicated claim form and objection process, and the proposed injunctive "relief" to be undertaken by Facebook.

Objection is made to any procedures or requirements to object that require information or documents other than those that are contained herein to the extent that such requirements are unnecessary, unduly burdensome, are calculated to drive down the

number and quality of objections to the settlement and violate objector's due process rights.

I generally object to the proponents of the settlement not sustaining their burden of proof on commonality, predominance, superiority and adequacy of class counsel and class representatives under FRCP Rule 23.

One basis for objection is the inadequacy of the notice. Both the long form class notice found on the settlement website and the email notice are inadequate regarding lawyers fees. The Court stated in the Preliminary Approval of Class Settlement filed on 12/30/2012 that "the method of providing notice to the Class ... constitutes the best method for providing such notice that is practicable under the circumstances and constitutes valid, due, and sufficient notice ... of [class members'] rights and obligations ... because the notices are reasonably calculated to apprise [the class] of ... the proposed settlement." I disagree. I object to the failure of either notice to define a maximum percentage for the payment of legal fees, the long form notice stating only that "the \$20 million fund will be used to pay any attorneys' fees or costs award by the Court." The email notice makes no reference whatsoever to lawyers' fees. There is nothing impracticable to including in the notice a maximum percentage for attorneys' fees.

Objection is made on the basis of the insufficiency of the \$20 million common fund. The monetary component of this settlement available for distribution after the deduction of lawyers fees and administrative costs is roughly \$12 million, a grossly inadequate amount for this settlement given the amount of revenue Facebook has generated by the illegal and unauthorized use of class members' and their childrens' likenesses and names. Facebook has been profitable since 2009.<sup>1</sup> The class in this suit includes any Facebook account holder whose privacy may have been violated by inclusion in a Sponsored Story any time before December 2012. While I do not have figures on the amount of profit generated by Facebook ads between 2009 and 2012, market research firm eMarketer reports that Facebook is expected to make nearly \$1 billion from mobile ad revenue in 2013.<sup>2</sup> The \$12 million settlement amount is a mere 1.2% of that \$1,000,000,000 projection. It is likely even a smaller percentage of the profits from 2009 through 2012. I also object to this settlement because there is a strong likelihood that Facebook account holders, the very people from whom Facebook has so handsomely profited, will not see a single dime in compensation from the unauthorized use of their and their childrens' photographs, likenesses, and names.

The Settlement amount available to class members after attorneys' fees and expenses of \$7,782,566 are deducted will be \$12,179,934. The long form notice explains that if there are 2.4 million claimants, the pro rata payment to each will be \$5. But if the number of claimants is higher, it is very likely that all settlement funds will be distributed

<sup>1</sup> "Facebook 'cash flow positive,' signs 300M users." Canada: CBC. September 16, 2009.

<sup>2</sup> "Facebook's mobile ad revenue forecasted to skyrocket in 2013." [http://news.cnet.com/8301-1023\\_3-57577864-93/facebook-s-mobile-ad-revenue-forecasted-to-skyrocket-in-2013/](http://news.cnet.com/8301-1023_3-57577864-93/facebook-s-mobile-ad-revenue-forecasted-to-skyrocket-in-2013/); <http://www.usatoday.com/story/tech/2013/04/03/emarketer-facebook-us-mobile-ad-revenue-soaring/2051265/>.

to charity. There are reportedly almost 159 million Facebook users in the United States alone.<sup>3</sup> If only 2% of the current Facebook users in the U.S. file claims in this class action suit, there is almost no chance of a monetary recovery. And the alternative in that case is that the settlement fund will be distributed to charity. The proponents of this settlement have not discharged their burden of proof that the settlement is fair, adequate and reasonable. Specifically, there should not be a *cy pres* distribution until all class members are completely made whole.

I further object to extent *cy pres* component of this settlement does not comply with the decision in *Dennis v. Kellogg*.<sup>4</sup>

Objection is made to attorneys' fees on basis of a lodestar or a percentage of recovery analysis. Attorneys' fees are excessive under a percentage of recovery evaluation. The [Proposed] Order Granting Motion for Attorneys' Fees, Costs and Class Representative Service Award states that attorneys fees and expenses of \$7,820,066.49 are "appropriate." A common fund benchmark of 25% has been deemed reasonable by the 9<sup>th</sup> Circuit.<sup>5</sup> I object that the fees here are more than 39% of the common fund.

The abovementioned motion refers "requested multiplier applied to their lodestar of \_\_\_\_," leaving out a lodestar multiplier. I object to the failure of the parties to reference the lodestar multiplier in that Motion or in either the long form or email notice. Class members cannot adequately assess the fairness of attorneys' fee without this lodestar multiplier. If this information is listed somewhere else in court documents, it is not easily discoverable, making it difficult for the average class member to assess the fairness of proposed lawyers' fees.

Objection is also made regarding the difficulty of determining *cy pres* settlement information. The long form notice discusses in paragraph 7 the alternative distribution (in lieu of monies paid to claimants) "as discussed in Section 2.3(a)(ii) of the Settlement Agreement," but does not refer the potential class member to the settlement website. In fact, nowhere in The Proposed Settlement section of the long form notice is there an instruction to readers that they should refer to the website to access settlement documents nor that those documents will be found under the "Court Documents" tab. And clicking on that tab reveals a list of *at least* 120 court documents, not one of which is titled "Settlement Agreement." There is an Amended Settlement Agreement and Release buried within the list of 120 other filings. This may be discoverable to some but surely not all potential class members. This confusing, circuitous route to find specific settlement information will likely result in some potential class members not filing objections to this settlement due to an inability to access settlement information.

I object to much of the non-monetary relief proposed in the settlement agreement as illusory and not designed to correct the existing problems at the heart of this class

<sup>3</sup> "F.T.C. Charges Myspace With Breaking U.S. Law in Sharing Users' Personal Information." [http://www.nytimes.com/2012/05/09/technology/myspace-agrees-to-privacy-controls.html?\\_r=0](http://www.nytimes.com/2012/05/09/technology/myspace-agrees-to-privacy-controls.html?_r=0)

<sup>4</sup> *Dennis v. Kellogg Company*, 687 F.3d 1149 (9th Cir. 2012).

<sup>5</sup> See *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011); *Dennis v. Kellogg*.



action. And while it is doubtful that the settlement provisions will offer prospective relief for Facebook account holders, they most assuredly will not cure the many retrospective wrongs. Some of the changes the settlement will require of Facebook generally place the responsibility on Facebook users to “opt out” of and make changes to Facebook settings. Rather than making the use of one’s image or name automatically forbidden and allowing Facebook to use said information only upon explicit “opting in” by the user, the settlement allows Facebook to put the responsibility on its users who may not be savvy enough to understand these options, technologically adept enough to figure out how to change these and many other privacy settings, or who might just be too busy to keep abreast of the multitude of ways in which Facebook is abusing its access. It seems that it will be business as usual at Facebook until account holders take steps to forbid Facebook from accessing and using personal and private information for profit. I object to the settlement on these grounds.

Objection is made to the settlement provision requiring children with Facebook accounts to be responsible for 1) apprising Facebook that their parents are not Facebook account holders and 2) for changing their own settings to indicate when they are no longer minors.<sup>6</sup> It is objectionable that adult users are to be made responsible for insuring that Facebook will not misuse their images. But to put this adult responsibility onto children is ludicrous and possibly even reckless.

Objection also is made to the settlement provision to develop settings that require class members to “prevent particular items or categories of content or information related to them” for the same reasons above.<sup>7</sup> It places the responsibility on the user to stop Facebook from misusing their personal and private information for financial gain. Once again, Facebook has the option of requiring users to “opt in” to having their likenesses and names used for profit, which would be proof of explicit, unequivocal permission for the use that information.

Objection is made to the failure to include in the class notice an address other than a P.O. Box and an email address for service on the claims administrator for either the claim form or the objection. Most private carriers, like Federal Express and UPS, will deliver only to a physical street address so it is difficult for class members to expedite their filings in a secure manner. Additionally, filing by email does not afford class members any way to track or confirm receipt by the Garden City Group of their objections. Objection is made on this basis.

On the settlement website, I found an email addresses for counsel and I am sending this objection to them on or before the due date. I also am emailing this objection

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<sup>6</sup> From the long-from notice: Facebook will “add a control in Minor Subclass Members’ timelines that enables each Minor Subclass Member to indicate that his or her parents are not Facebook users. Where a Minor Subclass Member indicates that his or her parents are not on Facebook, Facebook will make the minor ineligible to appear in Sponsored Stories until he or she reaches the age of 18, until the minor changes his or her setting to indicate that until the minor changes his or her setting to indicate that his or her parents are on Facebook, or until a confirmed parental relationship with the minor user is established.”

<sup>7</sup> From the long-from notice: “Develop settings that will allow Class Members to prevent particular items or categories of content or information related to them from being displayed in future Sponsored Stories.”

to the email address for the claims administrator, the Garden City Group:  
GCG@fraleyfacebooksettlement.com.

Sincerely,



Jo Batman

cc: **Via U.S.P.S. First Class Mail**

**CMRRR 7010 1870 0000 7697 5060**

*Fraley v. Facebook, Inc. Settlement*

c/o GCG

P.O. Box 35009

Seattle, WA 98124-1009

**CMRRR 7010 1870 0000 7624 1486**

Robert S. Arns, Esq.

The Arns Law Firm

515 Folsom Street

3rd Floor

San Francisco, CA 94104

**CLASS COUNSEL**

**CMRRR 7010 1870 0000 7697 5107**

Michael G. Rhodes, Esq.

Cooley LLP

101 California Street

5th Floor

San Francisco, CA 94111

**FACEBOOK'S COUNSEL**

**Via Email**

GCG@fraleyfacebooksettlement.com

#### PROOF OF SERVICE

I am a resident of Corpus Christi, Texas and am over the age of eighteen. On May 2, 2013, I mailed by U.S.P.S. First Mail my letter objecting to the class settlement and attorneys' fees to the Clerk of the Court, Class Counsel, and Defense Counsel at the addresses listed below.

Clerk of the Court  
U.S. District Court, Northern California  
San Francisco Courthouse  
16th Floor  
450 Golden Gate Avenue  
San Francisco, California 94102

*Fraley v. Facebook, Inc. Settlement*  
c/o GCG  
P.O. Box 35009  
Seattle, WA 98124-1009

Robert S. Arns, Esq.  
The Arns Law Firm  
515 Folsom Street  
3rd Floor  
San Francisco, CA 94104  
**CLASS COUNSEL**

Michael G. Rhodes, Esq.  
Cooley LLP  
101 California Street  
5th Floor  
San Francisco, CA 94111  
**FACEBOOK'S COUNSEL**

  
Jo Batman

# EXHIBIT A

**From:** legalnotice [mailto:[legalnotice@facebookmail.com](mailto:legalnotice@facebookmail.com)]  
**Sent:** Friday, February 01, 2013 06:58 PM  
**To:** Jo Batman <[jo.batman@kaplan.com](mailto:jo.batman@kaplan.com)>  
**Subject:** Re: LEGAL NOTICE OF SETTLEMENT OF CLASS ACTION

**NOTICE OF PENDING CLASS ACTION AND NOTICE OF PROPOSED SETTLEMENT**

**ANGEL FRALEY V. FACEBOOK, INC.**

**You are receiving this e-mail because you may have been featured in a "Sponsored Story" on Facebook prior to December 3, 2012.**

***A federal court authorized this Notice. This is not a solicitation from a lawyer.***

**Why did I get this notice?** This Notice relates to a proposed settlement ("Settlement") of a class action lawsuit ("Action") filed against Facebook relating to a particular Facebook feature called "Sponsored Stories." According to available records, you may be a "Class Member."

**What is the Action about?** The Action claims that Facebook unlawfully used the names, profile pictures, photographs, likenesses, and identities of Facebook users in the United States to advertise or sell products and services through Sponsored Stories without obtaining those users' consent. Facebook denies any wrongdoing and any liability whatsoever. No court or other entity has made any judgment or other determination of any liability.

**What is a Sponsored Story?** Sponsored Stories are a form of advertising that typically contains posts which appeared on [facebook.com](http://facebook.com) about or from a Facebook user or entity that a business, organization, or individual has paid to promote so there is a better chance that the posts will be seen by the user or entity's chosen audience. Sponsored Stories may be displayed, for example, when a Facebook user interacts with the Facebook service (including sub-domains, international versions, widgets, plug-ins, platform applications or games, and mobile applications) in certain ways, such as by clicking on the Facebook "Like" button on a business's, organization's, or individual's Facebook page. Sponsored Stories typically include a display of a Facebook user's Facebook name (i.e., the name the user has associated with his or her Facebook account) and/or profile picture (if the user has uploaded one) with a statement describing the user's interaction with the Facebook service, such as "John Smith likes UNICEF," "John Smith played Farmville," or "John Smith shared a link."

**What relief does the Settlement provide?** Facebook will pay \$20 million into a fund that can be used, in part, to pay claims of Class Members (including Minor Class Members) who appeared in a Sponsored Story. Each participating Class Member who submits a valid and timely claim form may be eligible to receive up to \$10. *The amount, if any, paid to each claimant depends upon the number of claims made and other factors detailed in the Settlement. No one knows in advance how much each claimant will receive, or whether any money will be paid directly to claimants.* If the number of claims made renders it economically infeasible to pay money to persons who make a timely and valid claim, payment will be made to the not-for-profit organizations identified on the Settlement website at [www.fraleyfacebooksettlement.com](http://www.fraleyfacebooksettlement.com) (if clicking on the link does not work, copy and paste the website address into a web browser). These organizations are involved in educational outreach that teaches adults and children how to use social media technologies safely, or are involved in research of social media, with a focus on critical thinking around advertising and commercialization, and particularly with protecting the interests of children.

In addition to monetary relief, Facebook will (a) revise its terms of service (known as the "Statement of Rights and Responsibilities" or "SRR") to more fully explain the instances in which users agree to the display of their names and profile pictures in connection with Sponsored Stories; (b) create an easily accessible mechanism that enables users to view, on a going-forward basis, the subset of their interactions and other content on Facebook that have been displayed in Sponsored Stories (if any); (c) develop settings that will allow users to prevent particular items or categories of content or information related to them from being displayed in future Sponsored Stories; (d) revise its SRR to confirm that minors represent that their parent or legal guardian consents to the use of the minor's name and profile picture in connection with commercial, sponsored, or related content; (e) provide parents and legal guardians with additional information about how advertising works on Facebook in its Family Safety Center and provide parents and legal guardians with additional tools to control whether their children's names and profile pictures are displayed in connection with Sponsored Stories; and (f) add a control in minor users' profiles that enables each minor user to indicate that his or her parents are not Facebook users and, where a minor user indicates that his or her parents are not on Facebook, Facebook will make the minor ineligible to appear in Sponsored Stories until he or she reaches the age of 18, until the minor changes his or her setting to indicate that



his or her parents are on Facebook, or until a confirmed parental relationship with the minor user is established.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>		
<b>SUBMIT A CLAIM FORM</b>	This is the only way to be eligible to receive a payment, if the Court orders payment to Class Members.	Deadline: May 2, 2013
<b>EXCLUDE YOURSELF</b>	This is the only option that allows you to retain the ability to file your own lawsuit about the legal claims in this case.	Deadline: May 2, 2013
<b>OBJECT</b>	Write to the Court about why you object to (i.e., don't like) the Settlement and think it shouldn't be approved.	Deadline: May 2, 2013
<b>GO TO THE "FAIRNESS HEARING"</b>	<p>The Court will hold a "Fairness Hearing" to consider the Settlement, the request for attorneys' fees and expenses of the lawyers who brought the Action ("Class Counsel"), and the class representatives' request for service awards for bringing the Action.</p> <p>You may, but are not required to, speak at the Fairness Hearing about any Objection you filed. If you intend to speak at the Fairness Hearing, you must follow the procedures stated on the Settlement website to notify the Court and parties of your intent when you serve your Objection.</p>	Hearing Date: June 28, 2013 at 10:00 a.m.
<b>DO NOTHING</b>	You will not receive a payment, even if the Court orders payment to Class Members. You will also be giving up your right to bring your own lawsuit related to the claims in the Action. You may be eligible to receive the non-monetary benefits of the Settlement, if the Settlement is finally approved.	No deadline

**Your Class Member Number:** 973730139

**To Parents and Guardians of Children on Facebook:** The Settlement also involves the claims of minors featured in Sponsored Stories on Facebook. Please see the Settlement website for more information.

**More information?** For more information about the Settlement and how to take the actions described above, please visit [www.fraleyfacebooksettlement.com](http://www.fraleyfacebooksettlement.com) (if clicking on the link does not work, copy and paste the website address into a web browser) or write to the Settlement Administrator at *Fraley v. Facebook, Inc.*, Settlement, c/o GCG, P.O. Box 35009, Seattle, WA 98124-1009, or [GCG@fraleyfacebooksettlement.com](mailto:GCG@fraleyfacebooksettlement.com). You may also contact Class Counsel, Robert S. Arns of the Arns Law Firm, by calling 1-888-214-5125 or by emailing [fb.settlement@arnslaw.com](mailto:fb.settlement@arnslaw.com).

## EXHIBIT B

**DECLARATION OF JO BATMAN IN SUPPORT OF OBJECTIONS TO  
CLASS ACTION SETTLEMENT IN *FRALEY V. FACEBOOK***

Comes now JO BATMAN and states the following under oath and under penalty of perjury in support of her objection:

“My name is Jo Batman. I am over the age of eighteen (18) years. I have never been convicted of a felony. I am qualified and competent to make this affidavit. The facts stated herein are within my personal knowledge.

“My home address is 441 Coral Place, Corpus Christi, Texas 78411. My telephone number is (361) 537-8136. I am a resident of Corpus Christi, Texas.

“This declaration is made in support of my membership as part of the Settlement Class. I am a member of the class by virtue of being a person in the United States who has a Facebook account and had my name, nickname, pseudonym, profile picture, photograph, likeness, or identity displayed in a Sponsored Story at any time on or before December 2, 2012, the date of entry of the Preliminary Approval Order.

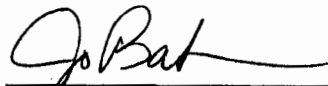
“I received an email Notice of Pending Class Action and Notice of Proposed Settlement on February 01, 2013 stating that I may have been in a “Sponsored Story” on Facebook prior to December 3, 2012.

“My Class Member Number is 973730139 and the email associated with my Facebook account is [jo.batman@kaplan.com](mailto:jo.batman@kaplan.com).

“I object to the proposed settlement of Angel Fraley, et al. v. Facebook, Inc., et al., Case No CV-11-01726 RS for the reasons stated in my objection.

“I declare under penalty of perjury under the laws of the United States of

America that the foregoing is true and correct. Executed this the 2<sup>nd</sup> day of May  
2013, at Corpus Christi, Texas.”

A handwritten signature in black ink, appearing to read "Jo Batman", written over a horizontal line.

Jo Batman